

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #05-10**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Application of the Tennessee sales and use tax to items other than plants which are sold by a business whose principal activity is the sale of plants grown by that business.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

The Taxpayer is a sole proprietorship doing business in Tennessee. The Taxpayer's principal business activity is the sale of plants that are grown by the Taxpayer. The Taxpayer also sells garden accessories such as plant pots, garden furniture, pre-packaged topsoil, garden gloves, and decorative garden items, as well as packaged seeds and

chemicals to enhance plant growth. However, the sale of plants grown by the Taxpayer represents over fifty-one percent of its total sales.

### **QUESTION**

Are sales of garden accessories such as pots, furniture, topsoil, and gloves, as well as seeds and fertilizer, exempt from sales and use tax under Tenn. Code Ann. § 67-6-301?

### **RULING**

No. Items sold by a nurseryman that are not nursery products or farm products, are not exempt from sales and use tax under Tenn. Code Ann. § 67-6-301. However, seeds, fertilizer, pesticides, and containers which are sold for the purpose of aiding in the production of food or fiber, for human or animal consumption, are exempt from sales and use tax under Tenn. Code Ann. § 67-6-329.

### **ANALYSIS**

The Tennessee Retailers' Sales Tax Act levies a tax on the sale of each item or article of tangible personal property sold at retail in this state. Tenn. Code Ann. § 67-6-202. A "sale at retail" means "a taxable sale of tangible personal property or specifically taxable services to a consumer or to any person for any purpose other than resale." Tenn. Code Ann. § 67-6-102(a)(28)(A). The "sales price" of an item or article means "the total amount for which a taxable service or tangible personal property is sold, including any services that are a part of the sale of tangible personal property . . . ." Tenn. Code Ann. § 67-6-102(a)(31).

However, the sale or use of certain items is specifically exempted from tax. Tenn. Code Ann. § 67-6-301(a) provides that the gross proceeds derived from the sale of nursery stock and other farm<sup>1</sup> or nursery products directly from a farmer or nurseryman are exempt from sales and use tax if fifty percent (50%) or more of such products are grown or produced in the calendar year by the farmer or nurseryman. If less than fifty percent (50%) of such products in any calendar year are grown or produced by the farmer or nurseryman, then only the gross proceeds from the sale of products actually grown or produced by the farmer or nurseryman shall be exempt from sales and use tax.

Among other items, Tenn. Code Ann. § 67-6-329(a) exempts from sales and use tax the retail sale of seeds, seedlings, plants grown from seed and liners (cuttings) which will produce food or fiber, including tobacco, for human or animal consumption, as well as fertilizer used to aid in the growth and development of such seeds, seedlings or plants. It also exempts pesticides<sup>2</sup> which are sold for the purpose of aiding in the production of

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<sup>1</sup> Although not the subject of this ruling, this exemption also includes qualified sales of livestock and poultry.

<sup>2</sup> "Pesticide" means any substance or mixture of substances or chemicals intended for defoliating or desiccating plants or for preventing, destroying, repelling or mitigating any insects, rodents, fungi, bacteria

food or fiber, including tobacco, for human or animal consumption. It exempts containers for farm products and plastic or canvas used in the care and raising of seeds, or seedlings, and plants as described above. It also exempts agri-sawdust and plastic or canvas used in covering feed bins, silos and other similar storage structures. Finally, it exempts adjuvants and surfactants solutions that are sold exclusively for the purpose of mixture with insecticides, pesticides, fungicides or herbicides or for use as a soil conditioner when such is intended to aid in the growth and development of food or fiber, including tobacco, for human or animal consumption. Tenn. Code Ann. § 67-6-329(a)(3)-(6), (9) and (10).

The exemption provided in Tenn. Code Ann. § 67-6-301 applies only to nursery or farm products. This exemption does not extend to all other items sold in a nursery store. Therefore, the sale of pots, furniture, gloves, and other accessories are not exempt from sales and use tax under Tenn. Code Ann. § 67-6-301 but may be exempt under Tenn. Code Ann. § 67-6-329(a)(3)-(6), (9) and (10).

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APPROVED: Loren Chumley  
Commissioner of Revenue

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or weeds, including but not limited to insecticides, fungicides, bacteriacides, herbicides, desiccants, defoliants, plant regulators, and nematocides. Tenn. Code Ann. § 67-6-329(a)(5).